

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EXPERIENCE HENDRIX, LLC; and
AUTHENTIC HENDRIX, LLC,

Plaintiffs,

V.

ELECTRIC HENDRIX, LLC;
ELECTRIC HENDRIX APPAREL,
LLC; ELECTRIC HENDRIX
LICENSING LLC; ELECTRIC
HENDRIX SPIRITS, L.L.C.; and
CRAIG DIEFFENBACH.

Defendants.

C07-338 TSZ

ORDER

THIS MATTER comes before the Court on plaintiffs' motion, docket no. 145, to extend the time during which plaintiffs may execute on the supplemental judgment and permanent injunction entered February 12, 2009 ("Supplemental Judgment"), docket no. 127. Having reviewed all papers filed in support of the motion, to which no response was submitted, the Court enters the following order.

Discussion

The Supplemental Judgment, which was entered pursuant to the stipulation of the parties, prohibits defendants and certain others from engaging in enumerated activities

1 involving or affecting plaintiffs' trademarks, service marks, and/or logos. See Supp. J.
2 (docket no. 127). In addition, the Supplemental Judgment awarded in favor of plaintiffs
3 and against defendants the principal sum of three million two hundred thousand dollars
4 (\$3,200,000). Id. at ¶ 1. According to plaintiffs' counsel, in the ten years since the
5 Supplemental Judgment was entered, interest has accrued at the rate of two and twenty-
6 eight hundredths of one percent (2.28%) per annum, and payments in the amount of
7 \$4,074.14 have been made by defendants. See Sacks' Decl. at ¶¶ 5-6 & Ex. 3 (docket
8 no. 146). Plaintiffs contend that, as of January 24, 2019, the balance remaining due from
9 defendants was \$3,994,313.52.

10 Under Washington law, a party in whose favor "a judgment of a court" has been
11 rendered may execute on the judgment at any time during the ten-year period following
12 its entry. See RCW 6.17.020(1). This ten-year period may be extended for another ten
13 years by applying "within ninety days before the expiration of the original ten-year
14 period" to "the court that rendered the judgment." RCW 6.17.020(3). No Washington
15 court has yet interpreted the 90-day deadline provision, but one commentator has
16 understood the language as meaning that applications made more than 90 days before the
17 expiration date are premature, while motions submitted after the ten-year period for
18 execution expires are late. 28 Marjorie Dick Rombauer, WASH. PRAC. (Creditors'
19 Remedies - Debtors' Relief) § 7.9 (2018) [hereinafter "Rombauer"]. Under this view,
20 plaintiffs' motion, which could have been filed as early as November 14, 2018, or as late
21 as February 11, 2019, was timely submitted on January 24, 2019.

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1 Plaintiffs' application is, however, still deficient. For purposes of determining
2 whether an application under RCW 6.17.020(3) is timely, the Washington Court of
3 Appeals has concluded that such application is not "filed" until the requisite fee is paid.
4 See *In re M.R.A.*, 2009 WL 2437238 (Wash. Ct. App. Aug. 11, 2009); see also
5 RCW 6.17.020(3) ("petitioner shall pay to the court a filing fee equal to the filing fee for
6 filing the first or initial paper in a civil action in the court"). The *In re M.R.A.* decision
7 appears to apply with equal force to matters before this Court. See RCW 6.17.020(5)
8 (defining "court" as including "United States district courts"). Plaintiffs have not
9 tendered the \$400 filing fee applicable to civil matters.

10 The question remaining for the Court is whether the lack of payment can be cured
11 now that the ten-year period for execution has expired. The commentator mentioned
12 earlier believes that any order of extension must be entered during the 90-day period
13 before the ten-year period at issue expires. Rombauer at § 7.9; see also Am. Discount
14 Corp. v. Shepherd, 160 Wn.2d 93, 156 P.3d 858 (2007) (holding that the legislature could
15 not retroactively revive the period for executing on a judgment after the initial ten-year
16 period expired). The Court finds this commentator's position unworkable because it
17 would treat as timely an application filed just before the close of business on the day
18 before the ten-year period would expire, but render ineffective any order subsequently
19 entered.

20 The Court recognizes that, in *In re M.R.A.*, the failure to perfect an application
21 under RCW 6.17.020(3) by paying the requisite filing fee was deemed jurisdictional. See
22 2009 WL 2437238 at *4; see also id. at *2 ("Absent a contrary legislative intent, we

1 construe statutory language according to its plain and ordinary meaning ‘even when [the]
2 results may seem unduly harsh.’” (alteration in original)). In *In re M.R.A.*, however, the
3 petitioner had been notified by the staff of the superior court clerk’s office that he needed
4 to pay the filing fee, and he failed to remedy the situation. *Id.* at *1. In this matter,
5 plaintiffs have received no warning from the Court about the lack of payment, and the
6 Court will permit plaintiffs to cure their deficiency by remitting the requisite \$400 filing
7 fee within seven (7) days of the date of this Order. In so ruling, the Court recognizes the
8 important distinction between a judgment and a judgment lien. A lien exists pursuant to
9 statute only “for a definite length of time,” but expiration of the ten-year (or twenty-year)
10 lien period does not extinguish the underlying judgment; the judgment continues to exist
11 even after the related lien has expired. *See Krueger v. Tippett*, 155 Wn. App. 216, 225-
12 26, 229 P.3d 866 (2010). In allowing plaintiffs to perfect their application under RCW
13 6.17.020, the Court is not resurrecting a judgment that has lapsed, but rather is deeming
14 the limitation period for executing on the Supplemental Judgment tolled for the period
15 while plaintiffs’ motion has been pending.

16 **Conclusion**

17 For the foregoing reasons, the Court ORDERS:

18 (1) Plaintiffs’ motion, docket no. 145, to extend for an additional ten years the
19 period during which plaintiffs may execute on the Supplemental Judgment, docket
20 no. 127, is GRANTED, provided that plaintiffs pay the required \$400 filing fee within
21 seven (7) days of the date of this Order. If plaintiffs fail to timely pay the required \$400

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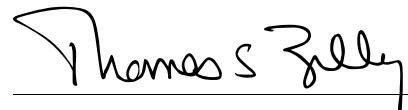
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1 filing fee, the limitation period for executing on the Supplemental Judgment shall be
2 deemed expired.

3 (2) The Clerk is DIRECTED to enter, upon plaintiffs' payment of the required
4 \$400 filing fee, an updated judgment summary pursuant to RCW 4.64.030, including the
5 above-mentioned \$400 filing fee as a recoverable cost, see RCW 6.17.020(3), and to send
6 a copy of this Order to all counsel of record.

7 IT IS SO ORDERED.

8 Dated this 8th day of April, 2019.

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12 Thomas S. Zilly
13 United States District Judge
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